**Martinson Electric Company *and* International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO.** Cases 12–CA–16387, 12–CA–16636, and 12–CA–16711

December 18, 1995

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND TRUESDALE

On June 29, 1995, Administrative Law Judge Albert A. Metz issued the attached decision. The Respondent filed exceptions and a supporting brief .

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order as modified.[3]

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Martinson Electric Company, Plant City, Florida, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Insert the following as paragraph 2(b) and reletter the subsequent paragraphs accordingly.

''(b) Notify in writing Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel that any future job applications will be considered in a nondiscriminatory manner.''

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We find no merit in the Respondent's contention that volunteer union organizers are not employees under the National Labor Relations Act. See *NLRB v. Town & Country Electric*, 115 S.Ct. 933 (1995) (mem.) (job applicants who are also paid union organizers are nevertheless employees within the meaning of Sec. 2(3) of the Act and are entitled to its protection).

[3] We shall modify the judge's recommended Order to conform it with his Notice to Employees.

*Dallas L. Manuel II, Esq.*, for the General Counsel.
*William E. Sizemore, Esq. (Thompson, Sizemore & Gonzalez)*, of Tampa, Florida, for the Respondent.
*William A. Dever Jr.*, of Valrico, Florida, for the Charging Party.

## DECISION

### STATEMENT OF THE CASE

ALBERT A. METZ, Administrative Law Judge. These consolidated cases were heard at Tampa, Florida, on May 8 and 9, 1995. A consolidated complaint issued against Martinson Electric Company (the Respondent) on January 30, 1995. The complaint was based on charges filed by the International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO (the Union). The charges were filed on July 18, October 4 and 31, 1994.[1] The primary issues are whether Respondent refused to hire employees in violation of Section 8(a)(1) and (3) of the Act and interrogated two employees concerning their union membership in violation of Section 8(a)(1).

On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the briefs filed by counsel for the General Counsel and Respondent, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

Respondent is a Florida corporation with an office and place of business at Plant City, Florida, where it is engaged in the electrical construction business. During the past 12 months Respondent purchased and received goods valued in excess of $50,000 at Florida locations from other enterprises located in Florida. Each of these other enterprises had received the goods directly from points located outside the State of Florida. The complaint alleges, Respondent admits, and I find that Respondent has been at all times material an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

#### II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### III. THE ALLEGED UNFAIR LABOR PRACTICES

##### A. *Background*

The crux of this case is whether the Respondent started using a temporary employment service to avoid hiring union electricians. The Respondent is a nonunion electrical contractor. Prior to January 1994 the Company had always hired its own employees. In early January, Respondent's owner, Alfred Martinson, heard about a temporary employment service, Second Shift, Inc. He checked with his accountant and allegedly determined that it would be cheaper to use temporary workers. Sometime around January 6, Second Shift presented Respondent with a document entitled ''General Agreements.'' This document was allegedly signed by Martinson on January 6. (G.C. Exh. 11.)

According to Martinson, Second Shift could not supply his company with electricians in early January. Respondent had a large amount of work at the time due to expanding demands at an Albertsons grocery warehouse project. Thus, Re-

[1] All dates refer to 1994 unless otherwise indicated.

spondent ran a newspaper ad between January 15–31 asking for journeymen electrician applicants.

B. *Evidence as to the January 6 ''Agreement''*

There is a dispute as to the meaning of the January 6 agreement involving Second Shift. The Respondent contends that by signing this document, it was agreeing to use Second Shift's services. Counsel for the General Counsel argues the agreement is not valid and no contract was signed by the Company until February 15.

The January 6 agreement is not signed by Second Shift where designated on the first page. The document contains no term certain that it is to be in effect. The second page of the exhibit is enlightening. It indicates that the document was intended as a solicitation:

> We appreciate your interest and hope that you will consider the service and benefits our company has to offer.
>
> . . . .
>
> If you are considering our services, please complete the following.
>
> [Space for company name, etc. which has been filled in by Martinson.]

A representative of Second Shift, Keith Renner, was subpoenaed by the Government to testify about the Respondent's file. There was only one Martinson agreement contained in Second Shift's records. It bears the date February 15, 1994. (G.C. Exh. 5.) Renner had no knowledge of the January 6 document.

Martinson acknowledged signing the February 15 agreement. He offered no clear explanation why a second contract had been executed a little over a month after the first one was allegedly signed. Respondent did not hire its first worker through Second Shift until February 16.

In sum, the evidence indicates no contract was consummated until February 15. I find that the January 6 document was not a contract to use the services of Second Shift. I further find that the Respondent did not commit to use Second Shift until it admittedly executed the February 15 agreement.

C. *Alleged Cost Savings from Using a Temporary Employment Service*

Martinson testified that his accountant told him he would save money by using the temporary service. He has continuously used the service and states that it has saved him an estimated ''25–30%.'' (Tr. 363.)

Respondent must pay a premium to Second Shift for each employee used. For example, an employee earning a wage of $10 per hour costs the Respondent $15.06 in payments to Second Shift. (R. Exh. 2.) Second Shift Representative Keith Renner testified that his company's services were designed to save the client money. He had no knowledge of whether that was the case with the Respondent.

The Respondent did not call the Company's accountant to testify. The Respondent did not offer its books or records into evidence to support its assertion of cost savings. The withholding of the testimony of the accountant is particularly puzzling. He presumably could offer details as to when he was queried by Martinson, his financial predictions, and the actual subsequent financial benefits of using Second Shift. Likewise, the absence of books and records establishing the claimed cost saving is a serious shortcoming in Respondent's defense. This evidence was easily within the command of the Respondent to produce as part of its case. The evidence goes to the very heart of Respondent's economic defense.

Under the adverse inference rule when a party has relevant evidence within its control which is not produced, that failure gives rise to an inference that the evidence is unfavorable to the party. *Auto Workers v. NLRB*, 459 F.2d 1329 (D.C. Cir. 1972).[2] It was not the obligation of the General Counsel to seek the production of the financial information. It is presumed a party will act on his own initiative to introduce the most favorable evidence in its behalf. *Auto Workers v. NLRB*, supra at 1345.

Additionally, Martinson's self-serving testimony concerning his estimate of savings does not negate the adverse inference. His unsupported impressions are no substitute for the relevant evidence Respondent withheld:

> In terms of the adverse inference rule, it makes not a whit of difference what Papakos testified to (his personal knowledge of rehiring records) or, indeed, whether he testified at all. Regardless of what other testimony was in the record, the fact remains that Gyrodyne had within its possession important evidence which it failed to produce and that an inference that the evidence was unfavorable naturally attaches to this conduct. [*Auto Workers v. NLRB*, supra at 1345–1346.]

I find that the testimony of the Company's accountant and the evidence from its books and records would be contrary to Martinson's assertion that the use of Second Shift was financially advantageous. *International Automated Machines*, 285 NLRB 1122, 1123 (1987); *Master Security Services*, 270 NLRB 543, 552 (1984). The Respondent has not shown by probative evidence that it decided to use Second Shift on the basis of a calculated economic business justification. *Adair Standish Corp*., 290 NLRB 317, 318–319 (1988).

D. *Alleged 8(a)(1) Interrogation of January Applicants*

In January two union electricians, Jack Poole and Paul Blankinship, responded to the Company's newspaper advertisement. Each made a point of concealing his connection to the Union. Both men were hired.

1. Paul Blankinship

Blankinship applied on January 19 and was interviewed by Superintendent Bob Sadler. His application listed the union contractor, Ken Robinson Electric, as a former employer. After Sadler looked at the application he asked Blankinship if he were Union. Blankinship said, ''[N]o Sadler then asked if his father was a union member. Blankinship told him he was not, that he was retired from the Air Force. Sadler told

[2] See, e.g., *Interstate Circuit, Inc. v. United States*, 306 U.S. 208, 226 (1939) (''The production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse.''); *Tendler v. Jaffe*, 203 F.2d 14, 19 (D.C. Cir. 1953) (''The omission by a party to produce relevant and important evidence of which he has knowledge, and which is peculiarly within his control raises the presumption that if produced the evidence would be unfavorable to his cause.'').

Blankinship he would call him later about possible employment.

The next day Blankinship was called to come to work. He arranged to report to the office on January 21. At that time he was given forms to fill out. He was using Sadler's office to do this task when Sadler came and stood in the doorway. Behind him was owner Alfred Martinson. Sadler once again asked if Blankinship was affiliated with the Union. When told no, Sadler asked how he was able to work at Ken Robinson Electric. Blankinship explained that he had been sent there as a ''white ticket'' referral from the union hall. (White ticket referrals are nonunion persons registered on the union books.)

Sadler denied that he ever asked Blankinship about his union membership Likewise, Martinson denied overhearing the conversation of January 21.

I credit Blankinship's version of the two incidents. By his demeanor and his detailed testimony he impressed me as giving an accurate recitation of the two encounters. On the other hand, the bare denials of Sadler and Martinson were not believable. I find that in interrogating Blankinship about his union membership on both occasions, Respondent violated Section 8(a)(1) of the Act. *Electro-Tec, Inc*., 310 NLRB 131, 134–135 (1993).

### 2. Jack Poole

Poole was hired after Blankinship in January. He was also interviewed by Sadler. Sadler noticed Poole's application listed a local union contractor, Knight Electric, as a previous employer. According to Poole, Sadler asked why he had left Knight Electric. Poole responded that the union was organizing there so he quit. Sadler replied, ''[T]hat's just like the damn Union.'' Sadler then asked Poole if he had joined the union while working at Knight Electric. Poole told him no. Sadler denied interrogating Poole about his union membership.

Poole impressed me as a forthright witness who readily acknowledged his support for the Union and his willingness to assist its organizing efforts. His demeanor was of a person who was telling the truth to the best of his recollection. In contrast, Sadler, because of his demeanor and simple denial that the event happened, was a less impressive witness. His disavowal that the conversation took place was not persuasive. I credit Poole that Sadler inquired as to his union membership. I find this questioning is a violation of Section 8(a)(1) of the Act.

### E. *Union Members Openly Apply for Work on February 1*

At approximately 9:35 a.m. on the morning of February 1, William Dever, a full-time paid organizer for the Union, was at Respondent's office.[3] He was accompanied by seven unemployed union electricians. The union members were Earnest Baggett, Pat Beall, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, and Clyde Tucker. Dever introduced himself to the receptionist as a union representative. Dever and the men filled out job applications and turned them in that morning. On the front page of the applications they added the words ''Union Organizer.'' The eight union applicants were never interviewed or contacted by the Respondent.

Martinson admitted that he reviewed the union members' applications. He acknowledged that he noticed their added language ''Union organizer.''

### F. *Foreman Loggans' Statements About Hiring*

When Jack Poole and Paul Blankinship were hired they went to work at the Respondent's Albertson's warehouse project under the direction of Foreman David Loggans. Prior to February 1, Loggans had told them there was much work. Loggans asked if the employees knew of any qualified electricians they could recommend. Poole testified that Loggans had complained of the large amount of work, and that ''he needed six more men real bad.'' (Tr. 102.)

At noon time on February 1, however, this solicitation of recommendations changed. Loggans called the electricians together at lunch and made an announcement. According to Poole, Loggans appeared shaken. Poole and Blankinship recalled that Loggans said that the Company was still accepting applications but was no longer hiring.

Contrary to the Government's assertion, the Company denies that Loggans is a supervisor or an agent of the Respondent. Loggans, who did not testify, is no longer employed by the Company. Loggans directed the employee's work at the Albertsons project, had a beeper to keep in touch with the Respondent's office, coordinated with Albertson's personnel to meet the customer's needs, and was the only person controlling the Respondent's work force who was consistently on the job. When Blankinship was hired he was told he would be working for Loggans. Loggans had a company truck and wore a company uniform.

I conclude that on the Albertsons' job Loggans was, at minimum, the Respondent's agent. I find that Loggans was acting as the Respondent's agent when he made the statements of the increased need for employees. I further find Loggans was acting as Respondent's agent when, shortly after the union group applied, he abruptly announced a change in the Company's hiring policy.

### G. *Respondent's Hiring Practices After February 1*

After the union members made application for work on February 1, the Respondent did not hire any additional workers until mid-February. On February 15, the Respondent signed the agreement with Second Shift to supply it with electricians. The first employee was hired through the temporary service starting February 16. Respondent has continued to use this and one other temporary service since that time.

On June 21 and July 27, Respondent placed orders for electricians and electrician helpers with the State of Florida Job Services. Two union members applied in August pursuant to Job Service referrals. Both ''overtly'' made known their union affiliation.

[3] It is settled Board law that even if an applicant is a full-time paid union organizer such person is nonetheless an ''employee'' within the meaning of the Act. *Sunland Construction Co*., 309 NLRB 1224, 1230 (1992); *Town & Country Electric*, 309 NLRB 1250, 1258 (1992). The Supreme Court has granted certiorari on this issue. See *Town & Country Electric v. NLRB*, 34 F.3d 625 (8th Cir. 1994), cert. granted 116 S.Ct. 450 (1994).

### 1. Patrick Berry

Patrick Berry applied for work on August 3. He put ''volunteer union organizer'' on his application. Superintendent Sadler reviewed his application and said that there was a lot of work coming up. According to Berry, there was no mention of temporary employment services the Company was using. Sadler said he would call later. Berry never heard from the Respondent.

Sadler recalled that at the time Berry applied the Respondent was doing its hiring through Second Shift. He did not contend, however, he told this to Berry. He did remember discussing Berry's application with Martinson. He opined that Berry was well qualified and the Company should send his application to Second Shift. He also thought they should contact Berry and tell him to apply through Second Shift in the hope ''that maybe he would be available to us.'' (Tr. 460.) Although attempts were allegedly made to contact Berry, these were unsuccessful. There is no evidence Respondent forwarded Berry's application to Second Shift as Sadler suggested.

I find Respondent's explanation concerning Berry to be disingenuous and inconsistent with the fact of seeking help through the State Job Service. It is at best ambiguous why Respondent would post electrician positions at the Job Service, review applications, but then subsequently try to advise applicants that it was not hiring directly.

### 2. Kenneth Kitchel

The later experience of Kenneth Kitchel is enlightening of the Company's motivation for not hiring directly despite its state job postings. Kitchel was referred to Respondent by the State Job Service on August 24.

Kitchel was conspicuously dressed in a union shirt and wearing an IBEW hat when he arrived at Respondent's office. He encountered Superintendent Sadler in the office. According to Kitchel, Sadler on seeing him angrily said, ''What the hell do you want?'' Kitchel told him that Job Service had sent him to apply for a job. Sadler said Respondent was not hiring that they used Second Shift. Kitchel said he wanted to fill out an application anyway. Sadler kicked the waste basket, ''slammed a few things,'' and said the secretary was not in so he did not have an application. Kitchel said he would wait for the secretary. At that point Sadler produced an application. Kitchel then filled out and left the completed application at the office. The application notes Kitchel's employment with union contractors and his IBEW training. Kitchel never heard from the Respondent.

Sadler's version of the encounter is more temperate. He acknowledged Kitchel's persistence at obtaining an application. Sadler told him that Respondent was not hiring except through Second Shift, and he gave the telephone number for the agency to Kitchel. Sadler did not deny Kitchel's recitation concerning his kicking the wastebasket, slamming things, and asking, ''What the hell do you want.''

Kitchel's testimony is the more credible version of what happened. Kitchel was forthright in his testimony and by his demeanor displayed a desire to accurately tell what occurred. In contrast, Sadler's testimony glossed over the incident. He did not deny his anger at having to deal with the insistent union member. I find Sadler's open irritation was triggered by Kitchel's prominent display of his union clothing. I further find that Sadler's hostility was indicative of Respondent's attitude towards union members who applied for work.

## H. *Analysis of Known Union Applicants not Being Hired*

The Government contends that Respondent refused to hire applicants who were known union members because of that affiliation. The Respondent defends by arguing it either did not need additional employees or that it had made the business decision to use temporary employment agencies.

The General Counsel has the initial burden of establishing a prima facie case. This must be sufficient to support an inference that union or other protected activity was a motivating factor in Respondent's action alleged to constitute discrimination in violation of Section 8(a)(3). The elements commonly required to support a prima facie showing of discriminatory motivation under Section 8(a)(3) are union activity, employer knowledge, timing, and employer animus. Once such prima facie unlawful motivation is shown, the burden shifts to Respondent to demonstrate that the alleged discriminatory conduct would have taken place even in the absence of the protected activity. If Respondent goes forward with such evidence, the General Counsel ''is further required to rebut the employer's asserted defense by demonstrating that the [alleged discrimination] would not have taken place in the absence of the employee['s] protected activities.'' *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

The test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 fn. 2 (1984). ''A finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied upon, thereby leaving intact the inference of wrongful motive established by the General Counsel.'' *Limestone Apparel Corp*., 255 NLRB 722 (1981), enfd. sub nom. 705 F.2d 799 (6th Cir. 1982).

The General Counsel has established through the interrogations and anger concerning union applicants that the Respondent has animosity towards the Union. The timing of the Respondent's cessation of direct hiring in relation to the Union's mass applications is also relevant. Likewise, the newspaper ads and State Job Service postings belie a determination to exclusively use Second Shift for Respondent's hiring needs. Importantly the Respondent has elected to withhold evidence within its control supporting its economic justification for not considering union members for hire. *Adair Standish Corp*., 290 NLRB 317, 318–319 (1988). (Respondent did not meet its *Wright Line* burden, in part, because it failed to produce relevant business records.) I find that the General Counsel has met his burden of showing by a preponderance of the evidence that the Respondent refused to consider the February and August applicants for employment because of their union membership. I further find that such conduct is a violation of Section 8(a)(1) and (3) of the Act.

Although the complaint alleges that the union members were refused employment, it is not clear from the record which persons would have been hired but for the Respondent's unlawful conduct. Therefore, I limit my findings to a conclusion that the General Counsel has proven that Re-

spondent refused to consider the 10 men for employment because of their union affiliation. The details of who would have been hired, the amount of backpay and to whom offers of employment should be made can best be resolved at the compliance stage. *Ultrasystems Western Constructors*, 316 NLRB 1243 (1995).

## CONCLUSIONS OF LAW

1. The Respondent, Martinson Electric Company, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Brotherhood of Electrical Workers, Local Union 915, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By discriminatorily refusing to consider for employment on February 1, 1994, Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker; on August 3, 1994, Patrick Berry; and on August 24, 1994, Kenneth Kitchel because of their union membership, the Company engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

4. By coercively interrogating job applicants concerning their union membership, the Respondent violated Section 8(a)(1) of the Act.

## THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily refused to consider for employment Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel it must consider them for hire on a nondiscriminatory basis. Respondent must make whole for any loss of earnings and other benefits any of the employees it would have hired but for its unlawful conduct. *Ultrasystems Western Constructors*, supra. Such backpay shall be computed on a quarterly basis from the date of the established refusal to hire to the date of a proper offer of employment, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). All reinstatement and backpay recommendations are subject to the procedures discussed in *Dean General Contractors*, 285 NLRB 573 (1987), and *Haberman Construction Co*., 236 NLRB 79 (1978).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

## ORDER

The Respondent, Martinson Electric Company, Plant City, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to consider Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel for employment because of their membership in a labor organization.

(b) Coercively interrogating job applicants concerning their membership in labor organizations.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make whole Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel for any losses they may have suffered by reason of Respondent's discriminatory refusal to consider them for hire in the manner set forth in the remedy section of this decision. Offer any of those applicants who would currently be employed, but for the Respondent's unlawful refusal to consider them for hire, positions for which they applied, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if they had not been discriminated against by the Respondent.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Plant City, Florida, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to consider applicants for employment based on our conclusion that they are union sympathizers.

WE WILL NOT coercively interrogate job applicants concerning their union membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL make whole Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel for any losses they may have suffered by reason of Respondent's discriminatory refusal to consider them for hire and WE WILL offer any of those applicants who would currently be employed, but for our unlawful refusal to consider them for hire, positions for which they applied, or if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges to which they would have been entitled if we had not discriminated against them.

WE WILL notify in writing Earnest Baggett, Pat Beall, Bill Dever, Jim Fales, Raymond Johnson, John Keefer, Tracy Pierce, Clyde Tucker, Patrick Berry, and Kenneth Kitchel that any future job applications will be considered in a nondiscriminatory manner.

MARTINSON ELECTRIC COMPANY